

STEVEN D. WERTH, # 121153  
GUY W. STILSON, # 142194  
LOW, BALL & LYNCH  
505 Montgomery Street, 7th Floor  
San Francisco, California 94111-2584  
Telephone (415) 981-6630  
Facsimile (415) 982-1634

Attorneys for Petitioner  
JOHN DEFREITAS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

In the Matter of	)	NO. C06 5874 SC
	)	
The Complaint of JOHN DEFREITAS, as Owner of	)	<b>PETITIONER JOHN DEFREITAS' CASE</b>
the 21' 2004 Malibu VLX vessel bearing Hull No.	)	<b>MANAGEMENT STATEMENT</b>
MB2K7976B404, for exoneration from of limitation	)	
of liability.	)	Date: January 12, 2007
	)	Time: 10:00 a.m.
	)	Dept.: 1, Floor 17
	)	
	)	Hon. Samuel Conti

Petitioner JOHN DEFREITAS respectfully submits this Case Management Statement pursuant to Civil Local Rule 16-9 as follows:

**I.**

**DESCRIPTION OF THE CASE**

This action has been related to Action No. C 06 2945 SC (the Cronin/McDonald action), which was filed by the owners of a 21' ski boat seeking exoneration from or limitation of liability under the federal Limitation of Liability Act, 46 USCA Section 183, et seq. ("LOLA") That vessel was being operated by Stephen Cronin, the adult son of one of the owners when it ran over a wakeboarder who had

1 been wakeboarding behind another vessel, had dropped her tow rope, and was waiting for her boat to  
2 come back and pick her up. In this action, Petitioner DEFREITAS, the owner of the ski boat that was  
3 towing the wakeboarder who was injured, similarly seeks exoneration from or limitation of liability  
4 under LOLA. None of the owners who seek limitation were aboard any of the vessels at the time of the  
5 accident.

6 In the Cronin/McDonald action, an order was issued by this Court on May 11, 2006 enjoining  
7 and restraining all other actions against Cronin and McDonald arising out of the activities of their vessel  
8 as cited above, except pursuant to claims filed in that action. Potential claimants were notified of the  
9 order. In the Defreitas action, Defreitas has filed a motion to enjoin and restrain all other actions against  
10 him arising out of the activities of his vessel as cited above, except claims to be filed in this action. That  
11 motion is set for hearing concurrently with this case management conference.

12 In the Cronin/McDonald action, claims and answers were filed by the injured wakeboarder,  
13 Molly McKenna, seeking damages for her injuries, and by Defreitas and the operator of his vessel, Craig  
14 Kolos, seeking indemnity, contribution and attorneys' fees and costs associated with investigating and  
15 defending McKenna's claims. In the Defreitas action, Defreitas has submitted appropriate paperwork  
16 seeking issuance of a monition and clerk's notice setting a time period for the presentation of claims, but  
17 the court has not acted on that paperwork yet. **Defreitas respectfully requests this honorable court**  
18 **issue the Clerk's Monition and Notice to Claimants at the time it grants Defreitas' Motion for**  
19 **Issuance of Injunction.** Until the Monition and Notice to Claimants are issued, Defreitas has nothing to  
20 serve on potentially responsible parties and cannot get his case underway.

21 McKenna has been negotiating with Defreitas, Kolos, Cronin and McDonald, through their  
22 respective attorneys, for a stipulation to allow McKenna to proceed with a civil action in the state court.  
23 To date, agreement has not been reached on that issue. McKenna's litigation strategy with regard to a  
24 state court action is not yet known, but it is possible that certain other individuals who are not parties to  
25 either the Cronin/McDonald or Defreitas action will be named as defendants or cross-defendants in that  
26 action; these are individuals who were present as passengers on the various vessels involved in the  
27 incident and it may be alleged that they had and breached a duty to keep a proper lookout, to provide a  
28 warning, etc.

**REQUEST FOR RELIEF**

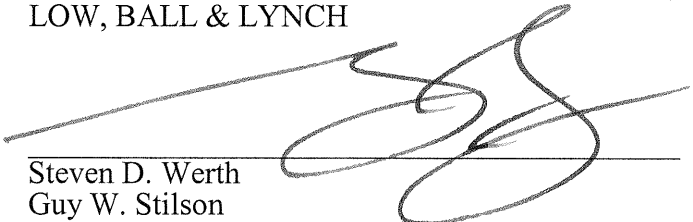
1. That this honorable Court grant Defretais' motion for issuance of injunction and complete and issue (A) The Order Approving Stipulation for Value, Costs, and Interest; Directing Monition; Enjoining and Restraining Other Actions; (B) Notice to Claimants; and (C) Monition, all of which have been previously filed in this case (additional copies are attached for the court's convenience); and
2. That, if all parties to these related actions will stipulate on the record in open court that the proposed policy-limits settlement between Defreitas/Kolos and McKenna is in good faith, that this honorable Court enter an order finding said settlement to be in good faith; or, if such a stipulation cannot be obtained,

1 3. That this honorable Court set a schedule for the briefing and arguing of a motion for  
2 determination of good faith settlement, to be filed on behalf of Defreitas in both actions.

3 Respectfully submitted

4 LOW, BALL & LYNCH

5 January 3, 2007

6   
7 Steven D. Werth  
8 Guy W. Stilson  
9 Attorneys for Petitioner JOHN DEFREITAS



1 against the Petitioner and/or the Vessel for losses and damages said to have been occasioned or incurred  
2 as consequence of the activities of the Vessel, and may or will exceed the value of Petitioner's interest in  
3 said Vessel, if any, and its pending freight; and

4 WHEREAS, Petitioner, as principal, having deposited with the Court as security for the benefit  
5 of the claimants, a stipulation for value, costs and interest dated 9/13/2006 with attached  
6 Letter of Undertaking, and executed by an authorized representative of Berkeley Underwriting Partners,  
7 LLC and StarNet Insurance Company, as surety, in the total amount of Forty-Five Thousand, Five  
8 Hundred Dollars (\$45,500.00) plus costs and interest, which amount represents the sum of Petitioner's  
9 interest or alleged interest in the Vessel, her freight then pending as of the voyage which commenced on  
10 July 30, 2005, and Petitioner's statutory obligation to give costs in compliance with Supplemental Rule  
11 F(1) of the Federal Rules of Civil Procedure, and Local Admiralty Rule 5-1;

12 NOW, THEREFORE, on application of Petitioner,

13 IT IS HEREBY ORDERED tha the Clerk shall issue a notice and monition under the seal of this  
14 Court to and against all persons or concerns claiming damages for any and all losses or damages  
15 occasioned by the activities of the Vessel on the voyage which commenced on or about July 30, 2005,  
16 admonishing them and each of them to appear and file their respective claims with the Clerk of this  
17 Court on or before the 28 day of February, <sup>2007</sup>~~2006~~, and make due proof of their respective  
18 claims in such manner as may hereinafter be directed by further order of this Court, subject to the right  
19 of any such persons or concerns to controvert or question said claims, with liberty also to any such  
20 claimants who have duly filed their claims to answer the petition herein and to file such answer with the  
21 clerk of this Court on or before hereinafter specified; and

22 IT IS FURTHER ORDERED that public notice of said monition pursuant to Supplemental  
23 Admiralty Rule F(4) of the Federal Rules of Civil Procedure shall be given by publication thereof in the  
24 newspaper known as the Daily Journal published in San Francisco, and that such notice shall be  
25 published once a week for four successive weeks prior to the date fixed herein for the filing of claims;  
26 and

27 IT IS FURTHER ORDERED that further prosecution of any and all suits, actions and  
28 proceedings which may already have been commenced against the Vessel or Petitioner alleging that he is



its owner, in any Court wheresoever to recover damages arising out of, or related to the activities of the Vessel on the voyage which began on or about July 30, 2005, and the institution and prosecution of any suits, actions or legal proceedings of any nature or description whatsoever in any Court wheresoever, except in this proceeding for exoneration from or limitation of liability against Petitioner, or otherwise subject to limitation in this proceeding, are stayed and restrained; and

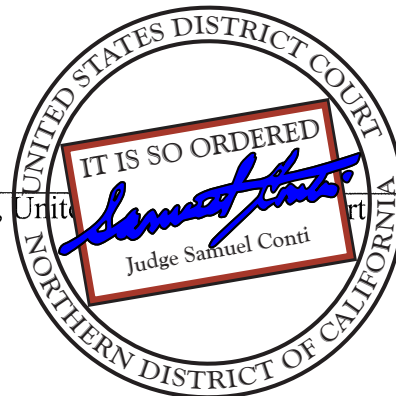
IT IS FURTHER ORDERED that service of this Order as a restraining order shall be made within this District in the usual manner and in any other District of the United States by the United States Marshall for such district by delivering a certified copy of this Order to the person or persons to be restrained, or to their respective attorneys or representatives.

IT IS FURTHER ORDERED that the above-described stipulation for value, cost, and interest, and attached Letter of Undertaking, deposited by Petitioner and/or his insurer with the Court for the benefit of potential claimants in the amount of Forty-Five Thousand, Five Hundred Dollars (\$45,500.00), as security for the amount of the value of Petitioner's interest or alleged interest in the Vessel, her freight then pending and for costs and interest such as Petitioner is statutorily obligated to give under Supplemental Rule F(1), be approved and Petitioner hereby is decreed to be in compliance with Supplemental Rule F(1) of the Federal Rules of Civil Procedure and with Local Admiralty Rule 5-1.

SO ORDERED.

Date: 1/12/07

Judge, United



STEVEN D. WERTH, # 121153  
GUY W. STILSON, # 142194  
LOW, BALL & LYNCH  
505 Montgomery Street, 7th Floor  
San Francisco, California 94111-2584  
Telephone (415) 981-6630  
Facsimile (415) 982-1634

Attorneys for Petitioner  
JOHN DEFREITAS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In the Matter of

The Complaint of JOHN DEFREITAS, as Owner of  
the 21' 2004 Malibu VLX vessel bearing Hull No.  
MB2K7976B404, for exoneration from of limitation  
of liability.

NO. CV 06 5874 SC

**NOTICE TO CLAIMANTS**

WHEREAS, a verified complaint has been filed by JOHN DEFREITAS ("Petitioner") as owner of the 21' 2004 Malibu VLX vessel bearing Hull No. MB2K7976B404 (the "Vessel"), claiming right to exoneration from or limitation of liability from any and all claims, losses, injuries, and/or damages occasioned or incurred by or in any way consequent from the voyage of the Vessel on or around July 30, 2005, and for certain other relief; and

WHEREAS, the Court having directed by its Order that all persons or entities claiming damages for any and all losses, injuries and/or damages occasioned by or resulting from or in any way consequent upon the aforesaid voyage, or by reason of any matters arising out of the voyage or trip on which said Vessel was then engaged, to file and serve their respective claims and answers to the complaint on or before \_\_\_\_\_.



1 PLEASE TAKE NOTICE that all persons asserting such claims are admonished to file their  
2 claims with the undersigned Clerk of the Court at 450 Golden gate Avenue, San Francisco, California,  
3 on or before \_\_\_\_\_, 2006, and to serve a copy thereof and answer to the  
4 complaint on Petitioner's attorneys, LOW, BALL & LYNCH, attn: Steven Werth, Esq., 505  
5 Montgomery Street, 7<sup>th</sup> Floor, San Francisco, CA 94111, on or before \_\_\_\_\_, 2006.

6 Any claimant desiring to contest the claims of Petitioners must file an answer to said  
7 complaint/petition, as required by Rule F of the Supplemental Rules for Certain Admiralty and Maritime  
8 Claims of the Federal Rules of Civil Procedure, and serve same upon Petitioners' attorney.

9 This Notice is issued by Order of the Court pursuant to Rule F(4) of the Supplemental Rules for  
10 Certain Admiralty and Maritime Claims, Federal Rules of Civil Procedure.

11 Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2006 in San Francisco, California.

12  
13  
14 Clerk, United States District Court  
Northern District of California  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

STEVEN D. WERTH, # 121153  
GUY W. STILSON, # 142194  
LOW, BALL & LYNCH  
505 Montgomery Street, 7th Floor  
San Francisco, California 94111-2584  
Telephone (415) 981-6630  
Facsimile (415) 982-1634

Attorneys for Petitioner  
JOHN DEFREITAS

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

In the Matter of ) NO. CV 06 5874 SC  
)  
)  
The Complaint of JOHN DEFREITAS, as Owner of )  
the 21' 2004 Malibu VLX vessel bearing Hull No. )  
MB2K7976B404, for exoneration from of limitation )  
of liability. )

TO THE UNITED STATES MARSHAL:

WHEREAS, a complaint has been filed in the United States District Court for the Northern District of California by John DeFreitas, as owner of the 21' 2004 Malibu VLX vessel bearing Hull No. MB2K7976B404 (the "Vessel") for limitation of or exoneration from liability in respect of loss, damage, injury, and destruction relating to, occasioned by or resulting from activities of said Vessel on that voyage which commenced on July 30, 2005. Said complaint prays that a notice issue out of this Court citing all persons claiming damages for any and all losses and injuries to file their respective claims with the Clerk of this Honorable Court, and to serve on or mail to the attorneys for Petitioner a copy thereof. Said complaint also prays that if it should appear that the petitioner is not liable for any such loss or

injury, it may be so finally adjudged by this Court; and

WHEREAS, Petitioner has filed in the Office of the Clerk of this Honorable Court a Stipulation for Value, Costs and Interest in the name of said Vessel and of freight then pending, pursuant to the order of this Court; and

WHEREAS, this Court having directed in an Order entered herein on \_\_\_\_\_, 2006, that a Notice shall issue citing all persons claiming losses or injuries occasioned by said Vessel's activities on or about July 30, 2005 to file their respective claims with the Clerk of this Court and to serve on or mail to the attorneys for complainants a copy thereof, on or before \_\_\_\_\_, 2006, subject to the right of any person claiming damages as aforesaid who shall have filed his claim under oath to controvert or question any other claim, and with liberty also to any such person to answer the complaint filed herein;

YOU ARE THEREFORE COMMANDED to cite all persons claiming damages for any loss, damage, injury or destruction occasioned by the said activities of that 21' 2004 Malibu VLX vessel bearing Hull No. MB2K7976B404 on or about July 30, 2005 to file their respective claims with the Clerk of this Court and to serve or mail to the attorneys for Petitioner a copy thereof on or before \_\_\_\_\_, 2006, subject to the right of any person claiming damages as aforesaid who shall have filed his/her claim under oath to controvert or question any other claim and with liberty also to any such person to answer the complaint;

AND YOU ARE FURTHER COMMANDED to publish notice of this notice in the Daily Journal, a newspaper published in the City of San Francisco, State of California, such notice to be published once each week for four successive weeks before the \_\_\_\_ day of \_\_\_\_\_, 2006, the return day mentioned herein, and such notice shall be in the form substantially as provided for in Supplemental Rule F for Certain Admiralty and Maritime Claims.

The U.S. Marshall is to make return to this Honorable Court together with this writ.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2006 in San Francisco, California.

\_\_\_\_\_  
Clerk, United States District Court  
Northern District of California